



Thomas G. Sherwood, LLC

ATTORNEYS AT LAW

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June 1, 2018

VIA ECF

Hon. Lois Bloom
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: Desir v. Florida Capital Bank, N.A., et al.
Case No. 18-CV-02630-ENV-LB

Dear Magistrate Judge:

We represent Defendant Stewart Title Company, Inc. ("STC"), incorrectly named herein as Stewart Title. We write in response to Plaintiff's request for a certificate of default against STC (Docket No. 15), which was filed on May 30, 2018, the day after STC timely served and filed its answer to the Plaintiff's complaint (Docket No. 8), notice of appearance (Docket No. 9), and corporate disclosure statement (Docket No. 10) (see also Docket No. 26, confirming that STC's deadline to appear or answer with respect to Plaintiff's complaint was May 29, 2018).

As the certificates of service attached to STC's answer, notice of appearance, and corporate disclosure statement show, Stewart timely answered Plaintiff's complaint and is not in default. Upon our receipt of Plaintiff's request for a certificate of default, we provided Plaintiff with proof of STC's timely appearance, and requested that Plaintiff immediately withdraw her request (see email with attachments enclosed). Plaintiff failed to respond or withdraw her application.

To the extent this Court is inclined to entertain Plaintiff's request for a certificate of default against STC, then STC respectfully requests a briefing schedule to oppose Plaintiff's application.

Respectfully submitted,

s\ Amy E. Abbandondelo

Enclosures

cc: Carlyne Desir (via email and regular mail)
Mitchell L. Pashkin, Esq. (via ECF)
Ashley Miller, Esq. (via ECF)
Evan E. Damico, Esq. (via ECF)
BJ Phoenix Finneran, Esq. (via ECF)

Amy E. Abbandonde

From: Amy E. Abbandonde
Sent: Thursday, May 31, 2018 12:57 PM
To: 'carlynedesir@gmail.com'
Cc: 'ashley.miller@akerman.com'; James P. Truit III; 'edamico@winston.com'; 'bjfinneran@zeklaw.com'
Subject: Desir v. Florida Capital Bank, N.A., et al. (Case No. 18-CV-02630)
Attachments: Filed answer with certificate of service.pdf; Filed notice of appearance with certificate of service.pdf; Filed disclosure statement with certificate of service.pdf

Dear Ms. Desir:

We represent Defendant Stewart Title Company Inc. ("STC"), incorrectly named herein as Stewart Title, in the above-referenced action. On May 29, 2018, we served STC's answer to the complaint, notice of appearance, and rule 7.1 disclosure statement by regular mail upon all parties and electronically filed those documents with the court (see copies of STC's filed answer, notice of appearance, and disclosure statement with certificates of service).

Today we received notification electronically of your request to hold STC in default. As established by the attached certificates of service, STC timely appeared and answered the complaint. Accordingly, we request that you immediately withdraw your application to hold STC in default.

All rights reserved.

Very truly yours,

Amy E. Abbandonde
THOMAS G. SHERWOOD, LLC
300 Garden City Plaza, Suite 222
Garden City, New York 11530
T: (516) 408-7030
F: (516) 408-7032
aabbandonde@tgsherwood.com
<http://www.tgsherwood.com/>

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
CARLYNE DESIR,

Case No. 18-CV-02630-ENV-JO

Plaintiff,

v.

FLORIDA CAPITAL BANK, N.A., THE BANK OF
NEW YORK MELLON FKA THE BANK OF NEW
YORK (CWALT 2006-31 CB), BANK OF AMERICA,
BAYVIEW LOAN SERVICING, LLC, FRENKEL
LAMBERT WEISS WEISMAN & GORDON, LLP,
STEWART TITLE, JP MORGAN CHASE BANK,
N.A., and MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC. (MERS),

Defendants.

-----X

ANSWER TO COMPLAINT

Defendant STEWART TITLE COMPANY INC. ("STC"), incorrectly
named herein as STEWART TITLE, by its undersigned counsel, THOMAS G.
SHERWOOD, LLC, for its answer to the complaint (the "Complaint") of Plaintiff
Carlyne Desir ("Plaintiff"), alleges as follows upon information and belief:

1. Denies the allegations set forth in each and every paragraph of the
Complaint, except admits the allegations set forth in numbered paragraph 6 on page 3 of
the Complaint (second paragraph from the top of page 3 of the Complaint).

FIRST AFFIRMATIVE DEFENSE

2. This Court lacks subject matter jurisdiction over this case.

SECOND AFFIRMATIVE DEFENSE

3. Plaintiff's claims all appear to arise from Plaintiff's purchase of real property located at 1192 East 46th Street, Brooklyn, New York 11234 (the "Property") on or about June 22, 2006, nearly twelve years ago.

4. Accordingly, Plaintiff's claims against Stewart are barred, in whole or in part, by the applicable statutes of limitations.

THIRD AFFIRMATIVE DEFENSE

5. STC did not owe any duty of care to Plaintiff in connection with the allegations set forth in the Complaint and, accordingly, STC is not liable to Plaintiff.

FOURTH AFFIRMATIVE DEFENSE

6. Plaintiff did not purchase a title insurance policy (the "Alleged Policy") underwritten by STC relating to 1192 East 46th Street, Brooklyn, New York 11234 (the "Property").

7. STC is not the addressee or a recipient of the undated letter annexed as Exhibit F to the Complaint from Plaintiff purportedly submitting a claim under the Alleged Policy.

8. STC did not perform any services relating to the disputed transaction and had no involvement whatsoever with the disputed transaction.

9. Plaintiff had no contractual relationship with STC and was not in privity with STC in connection with the events alleged in the Complaint.

10. Accordingly, STC cannot be liable to Plaintiff by reason of the allegations set forth in the Complaint.

FIFTH AFFIRMATIVE DEFENSE

11. Any alleged injuries and/or damages that Plaintiff sustained were not proximately caused by any act or omission by STC or anyone authorized to act on STC's behalf.

SIXTH AFFIRMATIVE DEFENSE

12. The Complaint fails to plead a claim for fraud against STC with the specificity and particularity required under the FRCP.

SEVENTH AFFIRMATIVE DEFENSE

13. The relief requested in the Complaint is barred by the doctrine of laches, as a result of Plaintiff's inordinate delay in bringing this action.

EIGHTH AFFIRMATIVE DEFENSE

14. Plaintiff has failed to mitigate any alleged damages.

NINTH AFFIRMATIVE DEFENSE

15. Plaintiff's claims against STC are barred by the doctrines of waiver, estoppel, and ratification.

TENTH AFFIRMATIVE DEFENSE

16. The injuries and/or damages alleged to have been sustained by Plaintiff were caused entirely or in part by the culpable conduct of Plaintiff, other defendants, or nonparties, without any negligence on the part of STC, and STC seeks a dismissal of the Complaint or a reduction in any recovery that may be had by Plaintiff in the proportion that the culpable conduct attributed to such others bears to the entire measure of responsibility for the occurrence.

ELEVENTH AFFIRMATIVE DEFENSE

17. To the extent (if any) that Plaintiff seeks damages from STC arising from an alleged breach of the Alleged Policy, Plaintiff's claims are barred by one or more exclusions from coverage, exceptions from coverage, conditions, or stipulations set forth in the Alleged Policy.

TWELFTH AFFIRMATIVE DEFENSE

18. Under the terms of the Alleged Policy, any liability that STC might otherwise have to Plaintiff in negligence merged into the Alleged Policy.

The Complaint fails to comply with FRCP Rules 8, 9, and 11, is incoherent, and frivolous. STC reserves its rights to assert additional affirmative defenses and claims once Plaintiff provides adequate notice of the transactions and occurrences that allegedly gave rise to this action and the legal basis for Plaintiff's claims.

WHEREFORE, STC respectfully demands judgment dismissing the Complaint as against it with prejudice, together with such other and further relief as to this Court may seem just and proper.

Date: May 29, 2018

THOMAS G. SHERWOOD, LLC

By 

Amy E. Abbandonelo
Attorneys for Defendant Stewart
Title Company Inc. incorrectly
named herein as Stewart Title
300 Garden City Plaza, Suite 222
Garden City, NY 11530
T: (516) 408-7030
F: (516) 408-7032
aabbandonelo@tgsherwood.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
CARLYNE DESIR,

Plaintiff,

Case No. 18-CV-02630-ENV-JO

v.

FLORIDA CAPITAL BANK, N.A., THE BANK OF
NEW YORK MELLON FKA THE BANK OF NEW
YORK (CWALT 2006-31 CB), BANK OF AMERICA,
BAYVIEW LOAN SERVICING, LLC, FRENKEL
LAMBERT WEISS WEISMAN & GORDON, LLP,
STEWART TITLE, JP MORGAN CHASE BANK,
N.A., and MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC. (MERS),

Defendants.

-----X

CERTIFICATE OF SERVICE

STATE OF NEW YORK)

: ss.:

COUNTY OF NASSAU)

AMY E. ABBANDONDELO, being duly sworn, deposes and says:

1. I am over eighteen years of age and I am associated with Thomas G. Sherwood, LLC, attorneys for Defendant Stewart Title Company Inc., incorrectly named herein as Stewart Title, in this action. I am not a party to this action.

2. On the 29th day of May, 2018, I served copies of the foregoing Answer to Complaint, upon the parties named below, via first class mail, by depositing true copies thereof, properly enclosed in sealed, post-paid wrappers, in a letter box in the County of Nassau and State of New York, a depository under the exclusive care and custody of the United States Postal Service, directed to said parties as follows:

Carlyne Desir
1211 Atlantic Court
Kissimmee, Florida 34759

Florida Capital Bank, N.A.
10151 Deerwood Park Boulevard
Building 100, Suite 200-A
Jacksonville, Florida 32256

The Bank of New York Mellon f/k/a
The Bank New York, (CWALT 2006-31CB)
225 Liberty Street
New York, New York 10286

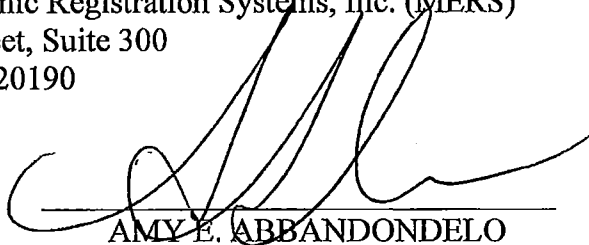
WINSTON & STRAWN LLP
Attention: Evan E. D'Amico, Esq.
200 Park Avenue
New York, New York 10166

Bayview Loan Servicing, LLC
Corporation Service Company
1201 Hays Street
Tallahassee, Florida 32301

Frenkel Lambert Weiss Weisman & Gordon, LLP
20 West Main Street
Bayshore, New York 11706

JPMorgan Chase Bank, N.A.
270 Park Avenue
New York, New York 10017

Mortgage Electronic Registration Systems, Inc. (MERS)
1818 Library Street, Suite 300
Reston, Virginia 20190



AMY E. ABBANDONDELO

Sworn to before me this
27th day of May, 2018



Notary Public

LORI GAETANI
Notary Public, State of New York
No. 01GA6080119
Qualified in Nassau County
Commission Expires 9/09/20 18

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
CARLYNE DESIR,

Plaintiff,

Case No. 18-CV-02630-ENV-JO

v.

FLORIDA CAPITAL BANK, N.A., THE BANK OF
NEW YORK MELLON FKA THE BANK OF NEW
YORK (CWALT 2006-31 CB), BANK OF AMERICA,
BAYVIEW LOAN SERVICING, LLC, FRENKEL
LAMBERT WEISS WEISMAN & GORDON, LLP,
STEWART TITLE, JP MORGAN CHASE BANK,
N.A., and MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC. (MERS),

Defendants.
-----X

NOTICE OF APPEARANCE

PLEASE TAKE NOTICE that THOMAS G. SHERWOOD, LLC hereby
appears in this action as attorneys for Defendant STEWART TITLE COMPANY INC.,
incorrectly named herein as STEWART TITLE, and that the undersigned attorney is
admitted or otherwise authorized to practice in this Court;

PLEASE TAKE FURTHER NOTICE that THOMAS G. SHERWOOD, LLC hereby demands that all notices and papers be served upon it at its offices located at 300 Garden City Plaza, Suite 222, Garden City, New York 11530.

Date: May 29, 2018

THOMAS G. SHERWOOD, LLC

By: 

Amy E. Abbondandolo
Attorneys for Defendant Stewart
Title Company Inc. incorrectly
named herein as Stewart Title
300 Garden City Plaza, Suite 222
Garden City, NY 11530
T: (516) 408-7030
F: (516) 408-7032
aabbandonlo@tgsherwood.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
CARLYNE DESIR,

Plaintiff,

Case No. 18-CV-02630-ENV-JO

v.

FLORIDA CAPITAL BANK, N.A., THE BANK OF
NEW YORK MELLON FKA THE BANK OF NEW
YORK (CWALT 2006-31 CB), BANK OF AMERICA,
BAYVIEW LOAN SERVICING, LLC, FRENKEL
LAMBERT WEISS WEISMAN & GORDON, LLP,
STEWART TITLE, JP MORGAN CHASE BANK,
N.A., and MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC. (MERS),

Defendants.

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STATE OF NEW YORK)

: ss.:

COUNTY OF NASSAU)

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1. I am over eighteen years of age and I am associated with Thomas G. Sherwood, LLC, attorneys for Defendant Stewart Title Company Inc., incorrectly named herein as Stewart Title, in this action. I am not a party to this action.

2. On the 29th day of May, 2018, I served copies of the foregoing Notice of Appearance, upon the parties named below, via first class mail, by depositing true copies thereof, properly enclosed in sealed, post-paid wrappers, in a letter box in the County of Nassau and State of New York, a depository under the exclusive care and custody of the United States Postal Service, directed to said parties as follows:

Carlyne Desir
1211 Atlantic Court
Kissimmee, Florida 34759

Florida Capital Bank, N.A.
10151 Deerwood Park Boulevard
Building 100, Suite 200-A
Jacksonville, Florida 32256

The Bank of New York Mellon f/k/a
The Bank New York, (CWALT 2006-31CB)
225 Liberty Street
New York, New York 10286

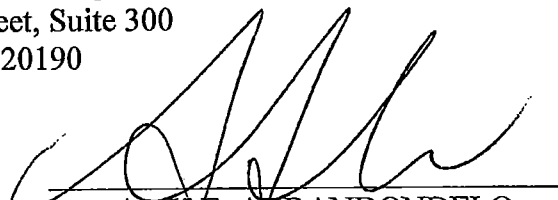
WINSTON & STRAWN LLP
Attention: Evan E. D'Amico, Esq.
200 Park Avenue
New York, New York 10166

Bayview Loan Servicing, LLC
Corporation Service Company
1201 Hays Street
Tallahassee, Florida 32301

Frenkel Lambert Weiss Weisman & Gordon, LLP
20 West Main Street
Bayshore, New York 11706

JPMorgan Chase Bank, N.A.
270 Park Avenue
New York, New York 10017

Mortgage Electronic Registration Systems, Inc. (MERS)
1818 Library Street, Suite 300
Reston, Virginia 20190


AMY E. ABBANDONDELO

Sworn to before me this
29th day of May, 2018



Notary Public

LORI GAETANI
Notary Public, State of New York
No. 01GA6080119
Qualified in Nassau County
Commission Expires 9/09/20 18

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CARLYNE DESIR,

Case No. 18-CV-02630-ENV-JO

Plaintiff,

v.

FLORIDA CAPITAL BANK, N.A., THE BANK OF
NEW YORK MELLON FKA THE BANK OF NEW
YORK (CWALT 2006-31 CB), BANK OF AMERICA,
BAYVIEW LOAN SERVICING, LLC, FRENKEL
LAMBERT WEISS WEISMAN & GORDON, LLP,
STEWART TITLE, JP MORGAN CHASE BANK,
N.A., and MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC. (MERS),

Defendants.
-----X

RULE 7.1 DISCLOSURE STATEMENT

Defendant STEWART TITLE COMPANY INC. ("STC"), incorrectly
named herein as STEWART TITLE, by its undersigned counsel. THOMAS G.

SHERWOOD, LLC, provides the following statement under Rule 7.1 of the Federal
Rules of Civil Procedure:

STC is a wholly owned subsidiary of Stewart Title Guaranty Company, which is in turn a wholly owned subsidiary of Stewart Information Services Corp. No other entity, directly or indirectly, owns 10% or more of any class of STC's equity interests.

Date: May 29, 2018

THOMAS G. SHERWOOD, LLC

By: 

Amy E. Abbandonde

Attorneys for Defendant Stewart
Title Company Inc. incorrectly
named herein as Stewart Title
300 Garden City Plaza, Suite 222
Garden City, NY 11530

T: (516) 408-7030

F: (516) 408-7032

aabbandonde@tgsherwood.com

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
CARLYNE DESIR,

Plaintiff,

Case No. 18-CV-02630-ENV-JO

v.

FLORIDA CAPITAL BANK, N.A., THE BANK OF
NEW YORK MELLON FKA THE BANK OF NEW
YORK (CWALT 2006-31 CB), BANK OF AMERICA,
BAYVIEW LOAN SERVICING, LLC, FRENKEL
LAMBERT WEISS WEISMAN & GORDON, LLP,
STEWART TITLE, JP MORGAN CHASE BANK,
N.A., and MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC. (MERS),

Defendants.

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CERTIFICATE OF SERVICE

STATE OF NEW YORK)

: ss.:

COUNTY OF NASSAU)

AMY E. ABBANDONDELO, being duly sworn, deposes and says:

1. I am over eighteen years of age and I am associated with Thomas G. Sherwood, LLC, attorneys for Defendant Stewart Title Company Inc., incorrectly named herein as Stewart Title, in this action. I am not a party to this action.

2. On the 29th day of May, 2018, I served copies of the foregoing Rule 7.1 Disclosure Statement, upon the parties named below, via first class mail, by depositing true copies thereof, properly enclosed in sealed, post-paid wrappers, in a letter box in the County of Nassau and State of New York, a depository under the exclusive care and custody of the United States Postal Service, directed to said parties as follows:

Carlyne Desir
1211 Atlantic Court
Kissimmee, Florida 34759

Florida Capital Bank, N.A.
10151 Deerwood Park Boulevard
Building 100, Suite 200-A
Jacksonville, Florida 32256

The Bank of New York Mellon f/k/a
The Bank New York, (CWALT 2006-31CB)
225 Liberty Street
New York, New York 10286

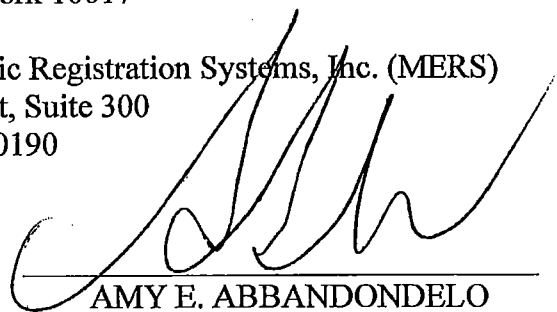
WINSTON & STRAWN LLP
Attention: Evan E. D'Amico, Esq.
200 Park Avenue
New York, New York 10166

Bayview Loan Servicing, LLC
Corporation Service Company
1201 Hays Street
Tallahassee, Florida 32301

Frenkel Lambert Weiss Weisman & Gordon, LLP
20 West Main Street
Bayshore, New York 11706


JPMorgan Chase Bank, N.A.
270 Park Avenue
New York, New York 10017

Mortgage Electronic Registration Systems, Inc. (MERS)
1818 Library Street, Suite 300
Reston, Virginia 20190



AMY E. ABBANDONDELO

Sworn to before me this
29th day of May, 2018



Notary Public

LORI GAETANI
Notary Public, State of New York
No. 01GA6080119
Qualified In Nassau County 18
Commission Expires 9/09/20

Amy E. Abbandondelo

From: ecf_bounces@nyed.uscourts.gov
Sent: Thursday, May 31, 2018 1:56 PM
To: nobody@nyed.uscourts.gov
Subject: Activity in Case 1:18-cv-02630-ENV-JO Desir v. Florida Capital Bank, N.A. et al Summons
Returned Executed

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U.S. District Court

Eastern District of New York

Notice of Electronic Filing

The following transaction was entered on 5/31/2018 at 1:56 PM EDT and filed on 5/25/2018

Case Name: Desir v. Florida Capital Bank, N.A. et al
Case Number: 1:18-cv-02630-ENV-JO
Filer: Carlyne Desir
Document Number: 26

Docket Text:

SUMMONS Returned Executed by Carlyne Desir. Stewart Title CT Corporation System served on 5/8/2018, answer due 5/29/2018. (Galeano, Sonia)

1:18-cv-02630-ENV-JO Notice has been electronically mailed to:

BJ Phoenix Finneran bjfinneran@zeklaw.com, bjfinneran@verizon.net

Ashley Sparrow Miller ashley.miller@akerman.com, ashleysparrowmiller@gmail.com

Amy Elizabeth Abbandondelo aabbandonelo@tgsherwood.com

Evan E. Damico edamico@winston.com, docketny@winston.com, evan-damico-2783@ecf.pacerpro.com, mpolster@winston.com

1:18-cv-02630-ENV-JO Notice will not be electronically mailed to:

Carlyne Desir
1211 Atlantic Court
Kissimmee, FL 34759

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

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